IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Mohan Singh Choudhary Vs. State of Rajasthan

S.B.CRIMINAL REVISION NO. 344/2006
against the Order dated 01.4.2006 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Jodhpur in Sessions case No. 116/2005.

Date of Order : 04/05/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Firoz Khan, for the petitioner.
Mr. J.P.S.Choudhary, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. J.P.S.Choudhary, public prosecutor for the State is directed to accept the notice on behalf of respondent State. He accepts the same.

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioner has challenged the order dated 01.4.2006 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Jodhpur (for short 'the trial court' hereinafter) in Sessions Case No. 116/2005, whereby the trial court declined to decide the application filed by the petitioner

under Section 319 Cr.P.C., and kept the application pending till statements of prosecution witnesses Mahendra Singh, Smt. Chanda, Miss Pushpa, Smt. Damyanti, Smt. Sharmila, Smt. Kamla and doctors who conducted the post-mortem namely Dr. H.S.Bairwa, Dr. Yogiraj and Dr. Chetna Sharma are recorded.

Heard learned counsel for the petitioner and public prosecutor for the State. Perused the order impugned.

From the perusal of the order impugned, it appears that the trial court declined to decide the application till the statements of the witnesses noticed above are recorded by it. If the application filed by the complainant is contested and decided after recording the statements of prosecution witnesses noticed above, by the time, the trial will be almost nearest to the conclusion, therefore, whether at that stage, it would be proper to implead the accused sought to be impleaded by the complainant or not.

Sub-section (1) of Section 319 Cr.P.C., provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed

against such person for the offence which he appears to have committed.

Thus, from a plain reading of sub-section (1) of Section 319 Cr.P.C., it is clear that in the course of any inquiry or trial of an offence, if it appears from the evidence collected by it that any person, not being the accused, has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which appears to have been committed. In the instant case, an application under Section 319 Cr. P.C. was moved by the petitioner complainant after his own statement and according to the petitioner from his statement, it is clear that against the persons sought to be arraigned as accused and are not accused facing trial, a case is made out, the trial court is required to decide the application on the basis of the evidence produced. If the trial court comes to the conclusion that the persons sought to be arraigned have committed any offence, it may pass the order accordingly, keeping the application pending till the examination of the witnesses noticed above and thereafter if the application is decided and the persons sought to be arraigned are impleaded as accused, a de novo trial has to start, and the witnesses already examined are again required to be examined which will create difficult situation than the one at the initial

stage. In the circumstances, therefore, the matter needs to be remanded to the trial court for decision on the application filed by the petitioner.

Consequently, the revision petition is allowed. The order impugned dated 01.4.2006 passed by the trial court is set aside and the matter is remanded to the trial court to decide the application filed by the petitioner under Section 319 Cr.P.C., on the basis of the evidence produced by the petitioner.

File of S.B.Criminal Misc. Petition No.454/06 has wrongly been tagged with this file, as it is not connected with the present revision. Let the file of S.B.Cr.Misc. Petition No.454/06 be detached.

(H.R.PANWAR),J.

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